IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 263 of 2006

Date of decision 19.12.2006

Basti Ram **…Appellant.**

Versus

Bish Ram and another **…Respondents.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: **Mr. B.C. Negi, Advocate.**

For the respondents : **Mr. Lalit K. Sharma, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. The only contention that has been raised is that the two Courts below have not appreciated the evidence in the right perspective, particularly the document Ext. D-1, which purports to be an instrument of family partition, as also the testimony of the plaintiff / appellant, who appeared as PW-1.

3. For appreciation of this submission, reference is required to be made to the facts of the case. Plaintiff / appellant filed suit for

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Whether reporters of Local Papers may be allowed to see the Judgment?

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permanent prohibitory injunction restraining the defendant from raising any construction on the suit land, alleging that the suit land was joint of the parties and the defendant / respondent had no right to raise construction on any portion thereof, until the partition took place.

4. The respondent / defendant set up the plea of private partition and produced document Ext. D-1. The two Courts below on the basis of the statement made by the appellant / plaintiff that the parties were in separate possession and that he had no objection if the respondent / defendant raised the construction only on that portion, which was in his possession as per document Ext. D-1, dismissed the suit.

5. Learned counsel for the appellant says that the statement of the appellant / defendant was not to be read in isolation and it was to be read along-with Ext. D-1, which was not admissible in evidence, on account of its not being registered.

6. The submission is without merit. No doubt a joint owner cannot raise construction on the joint property unless the property is partitioned or the other co-owners consent to the raising of such construction, but in the present case the statement of the plaintiff / appellant to the effect that he had no objection to the raising of the construction of the defendant on that portion of the land, which fell to his share as per document Ext. D-1, amounts to his consent. Therefore, no fault can be found with the decree passed by the trial Court dismissing the suit of the plaintiff / appellant as also the decree of the first Appellate Court dismissing the appeal of the appellant. No substantial question of law arises. Consequently, the appeal is dismissed.

December 19, 2006 (BC) **(Surjit Singh)**
Judge